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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,432	11/28/2003	Adelbert Gorham	5039.001US1	1191

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EXAMINER
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COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/724,432	GORHAM ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles E. Cooley	1723	

All participants (applicant, applicant's representative, PTO personnel):

(1) Charles E. Cooley (PTO). (3)\_\_\_\_\_.

(2) Charles Lemaire (App. Rep.). (4)\_\_\_\_\_.

Date of Interview: \_\_\_\_\_.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: pending claims.

Identification of prior art discussed: PELZER et al. '897, STRID et al..


Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: see attached letter.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
\_\_\_\_\_  
Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

## INTERVIEW SUMMARY

1. Applicant's Representative phoned to discuss the final rejection:

- Applicant questioned the withdrawal of claims 26-31. The examiner stated that the apparatus claims 1 and 13-20 are entitled to reexamination, however, the method and means claims are considered independent and distinct from the originally filed apparatus claims and could properly be withdrawn pursuant to MPEP 821.03. However, in a previous conversation, the examiner agreed to examine the apparatus claims (claim 1+) and newly submitted method claims if the claims were similar in structure/scope which is the case here, as a favor to Applicant. However, the examiner stated "means plus function" claims require more involved consideration (as established in MPEP 2181-2186) than the claims originally filed and is not willing to examine the such claims at this point in the prosecution. App. Rep. asked how claim 26 could be amended to obviate the withdrawal, however, the examiner would not be willing to reconsider amendments to claim 26 after final rejection. No agreement was reached on this issue.
- Applicant argued that PELZER et al. '897 does not meet the claimed invention since different substances are being processed, the cylinders are all attached together, and the reference lacks parallel unidirectional flow. The examiner pointed out that claims drawn to cylinder sets being rotatable relative to each

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other are allowed, however, Applicant appeared reluctant to accept the allowable subject matter at this time. The examiner stated that PELZER shows parallel unidirectional flow in alternate annular spaces between the cylinders as denoted by the flow arrows in Fig. 1 which meets the broadly recited flow pattern in the claims. The examiner noted the flow from the inlet to outlet of the rotor is not specified to obviate any serial flow so the showings of PELZER meet the flow limitations in the claims. With respect to the particular materials being processed, in apparatus claims the material or article worked upon does not limit apparatus claims and is not a major consideration when determining the patentability of said apparatus claims (MPEP 2115). "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." *In re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)). App. Rep. also argued the reference does not discharge solids as in the instant invention, however, the rejected claims (over PELZER) are devoid of such subject matter. Such arguments are of no patentable consequence because it is well settled that features not claimed may not be relied upon in support of patentability. *In re Self*, 671 F.2d 1344, 213 USPQ 1 (CCPA 1982). Although a claim should be interpreted in light of the specification disclosure, it is generally considered

improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

- Applicant argued that STRID et al. does not meet the claimed invention since different substances are being processed, the cylinders are all attached together, the reference is not a centrifuge, and the speeds of rotation are lower than that of the instant invention. Again, the particular substances being processed are not germane to the patentability of the apparatus claims and the methods claims are silent with regard to any particular substances (other than the broadly recited liquids). The examiner again pointed out that claims drawn to cylinder sets being rotatable relative to each other are allowed and that the rejected claims do not require such an arrangement. The examiner argued that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Since all of the elements of the rejected claims are found in the single reference to STRID, the examiner asserted the rejection is proper. The examiner believes the STRID device to properly be termed a “centrifuge” as the device separates substances by rotation of a rotor within a housing. The examiner explained the

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speeds of rotation are not at issue in the pending claims and centrifuges of the prior art operate over a range of rpm's from several to hundred of thousands of rpm's. Applicant concluded that STRID is not a centrifuge but the examiner disagreed and believes the 102 rejection to be proper.

- Accordingly, no agreement was reached. The examiner is willing to allow the application if the allowed subject matter is placed into independent form. The examiner expended significant effort in researching and considering the last amendment and newly submitted claims but cannot do so after-final rejection (see MPEP 714.12 AND 714.13). App. Rep. will consult with the inventors and decide whether to pursue further examination or appeal. The examiner considers this interview to be the one interview permitted after-final rejection (see MPEP 713.09).

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Charles" followed by a stylized flourish.

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

10 February 2006